



OFFICE OF THE LIEUTENANT GOVERNOR

SHEILA SIMON – LIEUTENANT GOVERNOR

Illinois River Coordinating Council Phone Conference

**Tuesday, October 2, 2012
Stratton Building
Springfield, Illinois
11:00 AM**

Minutes

Call to Order and Attendance

Lt. Governor Simon called the meeting to order and welcomed members and guests.

Lt. Governor Simon asked Marc Ayers, Office of the Lt. Governor, to take roll.

Citizen Members

Daphne Mitchell and Richard Worthen.

State Agency Members

Michael Falter and Michael Ziri, the Illinois Department of Natural Resources; Kurt Neibergall, the Illinois Environmental Protection Agency; and Terry Weldin-Frisch, the Illinois Department of Commerce and Economic Opportunity.

Ex-Officio Members

Nani Bhowmik, the Illinois State Water Survey; Rob Kay and C. Pius Weibel, the US Geological Survey; and Ward Lenz and Mike Hays, the US Army Corps of Engineers, Rock Island District.

Advisors

Joe Phillippe, the Illinois Historic Preservation Agency.

Guests

Elliot Brinkman, Prairie Rivers Network; Tom Davis, Illinois Office of the Attorney General; and Tracy Yang and Joyce Blumenshine, the Illinois Sierra Club.

Absent Members

Doug Blodgett, The Nature Conservancy of Illinois; Debbie Bruce, the Illinois Department of Natural Resources; Lee Bunting, Association of Illinois Soil and Water Conservation Districts; Margaret Frisbie, Friends of the Chicago River; Reggie Greenwood, the South Suburban Mayors and Managers Association; Randy Grove, the Illinois Department of Agriculture; Wendell Shauman, the Illinois Farm Bureau; Marcia Willhite, the Illinois Environmental Protection Agency; and Janel Veile, Illinois Department of Transportation.

Absent Ex-Officio Members

Bob Barry, the US Fish and Wildlife Service, Illinois River; Colleen Callahan, the US Department of Agriculture, Rural Development; Louise Clemency and Scherrie Giamanco, the US Fish and Wildlife Service, Chicago Office; Colonel Mark Deschenes, the US Army Corps of Engineers, Chicago District; Ivan Dozier, the US Department of Agriculture, Natural Resources Conservation Service; Colonel Christopher Hall, the US Army Corps of Engineers, St. Louis District; Tim Henry, the US Environmental Protection Agency, Region 5; Captain Steve Hudson, the US Coast Guard, Sector Upper Mississippi; Don McKay, the Illinois Geological Survey; Colonel Vincent Quarles, the US Army Corps of Engineers, Chicago District; and Lieutenant Doug Salik, the US Coast Guard, Sector Lake Michigan, Marine Safety Unit Chicago.

Absent Advisors

Brian Anderson, the Illinois Natural History Survey; Misganaw Demissie, the Illinois State Water Survey; Ted Kratschmer, the National Great Rivers Research and Education Center; and Manohar Kulkarni, the Illinois Sustainable Technology Center.

Chairman's Remarks

Lt. Governor Simon informed the Council that because not enough voting members were present to create a quorum, the Council would not be able to pass motions or approve minutes.

Lt. Governor Simon commented that she was pleased to have everyone present on the call. She voiced her belief that the last special phone conference, held on August 7, 2012, had worked well to gather information and answer questions.

Lt. Governor Simon introduced Maria Cappocia, Office of the Lt. Governor, Deputy Chief of Staff for Policy, to introduce herself to the council.

Cappocia noted that since the last IRCC meeting, DK Hirner, previously Chief of Staff for the Office of the Lt. Governor, had left the Office to work on other projects. Cappocia informed the Council that she would be assuming Hirner's responsibility of working alongside Ayers on the Rivers Coordinating Councils.

Lt. Governor Simon thanked all Council members who participated in the last special phone conference, in which useful information was provided on the potential sand mine near Starved Rock State Park. She noted that some developments had taken place since the last special phone conference and asked Ayers to conduct a brief overview of the issue.

Ayers provided a brief overview of the IRCC's discussion of the potential sand mine near Starved Rock State Park thus far. On February 6, 2012, a Joint Rivers Coordinating Council (JRCC) meeting was held at the Illinois Department of Natural Resources (IDNR) building in Springfield. Half of the JRCC meeting was dedicated to introducing the three Rivers Coordinating Councils to the issue of the potential sand mine. Following that meeting, the IRCC again discussed the potential sand mine at the June 20, 2012 IRCC meeting, which was held at the Shedd Aquarium in Chicago. At that meeting, both the IDNR and the Illinois Environmental Protection Agency (IEPA) spoke on behalf of their departments which were considering permits related to the potential sand mine. Members of the Council and the public asked questions of those agencies, as well as the U.S. Army Corps of Engineers (USACE), during the meeting. Many of those questions required further information from the agencies, and their answers were provided at a special phone conference held on August 7. A discussion of those answers during the

August 7 phone conference led to further questions, and the current special phone conference was scheduled to discuss follow-up questions and their responses.

Lt. Governor Simon opened the floor for discussion.

Discussion of Questions and Responses Regarding Potential Sand Mine

Mitchell noted that she believed a question raised by Davis at the special phone conference held on August 7, had not been resolved. Mitchell was unsure of the exact wording of the question, but believed it related to the reclamation plan and the short and long term impacts of the potential sand mine. She believed the question asked whether or not a task had been accomplished by the IDNR at the county level. Davis responded that he believed Mitchell was referring to the IDNR consultation process. Davis informed the Council that following the August 7 phone conference, he had the opportunity to review the materials provided to LaSalle County by the mining company, Mississippi Sand, during the zoning special use application process. Davis noted that those materials showed that the IDNR had completed an informal consultation with LaSalle County regarding the potential sand mine, as well as a more formal consultation with the IEPA, during the zoning special use application process. However, Davis argued, the issue of whether or not the consultation was completed to the full standards of the regulatory requirements is still unresolved.

Mitchell questioned how any permits regarding the potential sand mine could have moved forward without answers regarding the standard of the consultation process completed by the IDNR.

Cappocia noted that after the August 7 special phone conference, where several follow-up questions were asked of the agencies, the Office of the Lt. Governor had received the agency responses and distributed them to members of the Council. Cappocia noted that both the IDNR and the IEPA had responded to the outstanding questions that were identified at the conference on August 7. Mitchell voiced her opinion that the final answers received from both the IEPA and the IDNR were unsatisfactory and left questions unanswered.

Cappocia asked if it would be beneficial to go through each question with the responses. Mitchell responded that would be fine.

Cappocia noted that questions were divided by the agency responding, for clarity. She read the first question, addressed to the IDNR, which asked if a copy of the reclamation plan had been provided to the public at the public availability session held by the IEPA on May 23, 2012. In response to that question, Cappocia read, the IDNR responded that it had not supplied a copy of the reclamation plan at the IEPA's public availability session.

Discussion of Question 1

Mitchell argued that the failure to distribute a copy of the reclamation plan at the public availability session supported her previous comments arguing that the public had not been able to view the permitting processes and request outside opinions.

Cappocia invited the IDNR to speak to the question on the reclamation plan.

Falter informed the Council that a copy of the reclamation plan is on file at the LaSalle County Clerk's office for the general public to review, and that the public is able to issue a Freedom of Information Act (FOIA) request for those materials.

Mitchell noted that a FOIA request had been presented to the IDNR and was not fulfilled. Falter responded that he was uncertain which FOIA request Mitchell was referring to, and noted that the IDNR fulfilled two FOIA requests through its Office of Mines and Minerals.

Lt. Governor Simon asked if a copy of the reclamation map had been provided by Mississippi Sand, LLC. Falter responded that a copy of the reclamation map was provided by Mississippi Sand to the IDNR as part of the reclamation plan. Lt. Governor Simon asked if this map would have been included in the materials that were presented to LaSalle County by the mining company during the zoning special use process. Falter responded that the map would not have been included in the zoning special use process; rather, the map was included in the materials provided to the IDNR as part of the official permitting processes. However, Falter noted that those materials are given to LaSalle County.

Lt. Governor Simon asked if Mitchell received a copy of the reclamation plan and the reclamation map. Mitchell responded that she did not personally have a copy, nor had she attempted to receive one, but that she believed other individuals had issues when attempting to receive copies.

Brinkman noted that he had sent a FOIA request for reclamation plan materials. He noted that he felt the reclamation plan map provided by Mississippi Sand to the IDNR was inconsistent with Phase I of the proposed mining. The map showed that a reclamation lake would be placed over the mining area, including a portion of Wetland I. In contrast, Phase I of the proposed mining noted there would be a 25-foot buffer surrounding the jurisdictional Wetland I. Brinkman noted that when an additional FOIA request was sent for a copy of the updated reclamation plan and the materials were received, the reclamation map still indicated that a portion of Wetland I would be inundated by water.

Lt. Governor Simon asked for clarification that Brinkman has access to both the original and the revised reclamation plan. Brinkman confirmed that he did have both copies of the reclamation plan and the reclamation map.

Lt. Governor Simon asked for additional clarification that Brinkman's concerns related to what the reclamation plan contains, rather than access to the plan. Brinkman responded that there have appeared to be both types of issues, and suggested that Yang might be able to speak to issues receiving materials through FOIA requests. However, Brinkman confirmed that his concern was over potential inconsistencies between the reclamation plan's map and what the reclamation plan stated would actually happen during Phase I of mining. Yang responded that she had located an updated version of the reclamation plan map, but that her FOIA requests to receive a copy of the full updated plan from the IDNR had not been approved.

Mitchell commented that she believed the Office of Mines and Minerals, in correspondence responding to FOIA requests for the updated reclamation plan, had stated that the office was too busy to send out full documents.

Lt. Governor Simon noted that Falter had previously mentioned that the IDNR has tried to give any information that it can to individuals interested in the permitting processes. She commented that, similarly, it was her desire to ensure that individuals have the information they need to participate in the permitting process. She asked Falter if there was any issue with providing individuals a full copy of the updated reclamation plan. Falter responded that any requests for the original reclamation plan had been fulfilled. He noted that recently, the Office of Mines and Minerals had begun to receive FOIA requests for the approved plan. Those requests have been rejected because the permit, and the fully approved plan which corresponds to it, has not yet been issued. Falter informed the Council that if the Office of Mines and Minerals rejects a FOIA request on this subject, it would not be due to lack of time or staff, but would be because the permit has not yet been issued.

Mitchell asked Falter if he attended the IRCC meeting on June 20 at the Shedd Aquarium in Chicago. Falter noted that he was not in attendance, but that Barry McCauley, of the Office of Mines and Minerals, was.

Mitchell argued Yang's statements show that a full copy of the reclamation plan has still not been given out to all interested parties. Falter noted there has been some question of differences in the copies that each agency has. Falter informed the Council that the IDNR has released copies of the original reclamation plan that it received.

Mitchell voiced her concern that there may be different versions of the reclamation plan and its map among each agency. She argued that if the Sierra Club says that it has not received a full copy of the reclamation plan, but the IDNR says that what it has provided was the full plan, there appears to be an issue. Falter responded that different agencies might have different reclamation plans and reclamation maps, based on what lies under their jurisdiction. He noted that all information on the actual mining area, which falls under the jurisdiction of the IDNR, has been provided by the applicant within the copy of the reclamation plan that he is referencing. Falter noted that if there are differences in what is being permitted, there will be differences in what is on the map.

Mitchell noted that questions asked at the IRCC meeting on June 20 specifically related to the copy of the reclamation map that the IDNR had. Falter noted that the IDNR's copy of the reclamation map has changed since the initial application. He acknowledged that the IDNR has received questions related to the reclamation map's depiction of the reclamation lake as inundating a portion of Wetland I. However, Falter noted that the IDNR has informed the IRCC and members of the public that the plan stated that there would be a 25-foot buffer around any wetland determined to be jurisdictional to the USACE. He noted that the questions related to whether or not the map was correct should be answered, as the map was correct – it showed where the lake would be and where the wetland was. Falter noted because Wetland I has since been determined to be jurisdictional, there will be a buffer surrounding the wetland and the reclamation lake will be altered to adhere to those boundaries. Mitchell contended that the buffer would not be enough to protect the wetland.

Lt. Governor Simon commented that she wanted to ensure that all individuals had access to the information that they should have access to. She asked for clarification as to whether there was a new copy of the reclamation plan which noted the updates or revisions to the plan, or if all information is contained in one plan. Falter responded that there would be one plan. He noted

that the IDNR had asked questions of the mining company and received answers to those questions. Those answers will be included as part of the approved plan that will be available once the permit is issued.

Lt. Governor Simon asked if the plan would be relatively the same as the original plan that many members of the IRCC have access to. Falter noted that there would be slight clarifications.

Lt. Governor Simon asked if members of the public or of the Council could request information on those clarifications. Falter noted that once the permit is issued, all of the updated information would become available.

Mitchel questioned what recourse would be available for members of the public who have comments or concerns about the reclamation plan once it has been released, as the permit would already be issued. Falter responded that the only opportunities for objection within the IDNR permitting process for potential sand mines occurs within the first 45 days of the application process. During this time, the county board which would have jurisdiction over the potential mining site may request a public hearing. Falter noted that the only opportunity for the public to speak during the IDNR permitting processes lies within this hearing process, which only the county board can request. The LaSalle County Board chose not to request a public hearing for the potential sand mine in this instance.

Mitchell noted that she had already commented on the inability of the public to speak at the LaSalle County Board hearing related to the zoning special use application. She voiced her opinion that the agencies have a duty to protect the lands that belong to the public and that the LaSalle County Board should not have had the final authority in this instance. Mitchell also voiced her disappointment in the fact that some of the permits related to the potential sand mine had already been approved and voiced her concern that the Starved Rock State Park would be negatively impacted by this mining process.

Lt. Governor Simon asked if the clarifications made to the reclamation plan through the IDNR permitting process were contained in any one document. Falter responded that those changes were contained in letters of correspondence between the IDNR and Mississippi Sand, which would be a series of documents. He noted that the updates to the plan would not be boiled down to one document, but that the letters of correspondence would instead be included in the approved reclamation plan.

Lt. Governor Simon invited discussion on the second question, addressed by the IDNR, which asked where individuals could receive more information regarding the wetlands discussed within the reclamation plan and its accompanying materials.

Discussion of Question 2

No comments were made.

Lt. Governor Simon invited discussion on the third question, addressed by the IDNR, which asked how the IDNR came to its determinations on the short and long-term impacts of the mine.

Discussion of Question 3

Lt. Governor Simon invited the IDNR to elaborate on its process for determining the short and long-term impacts of the potential sand mine.

Falter noted that while determining the short and long-term impacts of potential sand mines, the IDNR utilizes several resources, including: the knowledge and experience of each individual inspector within the review process, the information contained within the application, and the specific specializations of other employees of the IDNR.

Mitchell asked if the person who made the final decision regarding the determination walked the full area of the mining location, talked to the individuals who lived there, reviewed the geological area of the mine site and surrounding lands, and reviewed how the mine might affect Starved Rock State Park. Falter noted that the individuals completing the determination did not walk the canyon, but would be familiar with the Starved Rock State Park through their previous experiences at the IDNR. Further, Falter noted that the IDNR has very specific blasting regulations, which have previously been discussed at IRCC meetings, which would impact their determinations regarding impact to the surrounding areas. He also informed the Council that an on-site visit was made to the proposed permit area to walk the mining site.

Mitchell asked for clarification that the adjoining area, including the canyons within Starved Rock State Park, were not walked by members of the Office of Mines and Minerals at the IDNR during their site inspection. Falter responded that they were not.

Mitchell asked if the inspectors spoke to the homeowners whose properties overlook the mine site and viewed those property locations. Falter responded that the inspectors did not, but that the inspectors know the locations of those homes and have previously been by them. He further noted that the IDNR's blasting regulations protect those homes.

Falter noted that the IDNR operated within the law when inspecting the potential mining location and determining the short and long-term impacts of the potential mine. He informed the Council that the IDNR cannot operate outside the law to enforce things that lie outside of its regulatory powers.

Mitchell voiced her opinion that each agency working independently under separate legislation cannot address the full issue of the potential mining site. She voiced her opinion that the agencies did not look at all of the impacts of the potential mining site, including how it would impact the surrounding area and the public.

Lt. Governor Simon commented that she appreciated this input concerning the permitting processes for sand mining. She noted that there are regulatory laws that are set up to dictate the responsibilities that each state agency has within the permitting processes. She commented that the IRCC could look at these processes in terms of the overall picture and question how it might help to make updates to these processes in the future.

Lt. Governor Simon asked Falter for clarification that the IDNR's jurisdiction fell over the reclamation portion of the mining process. She further asked if the questions asked by the Council, which seem to relate to mining and procedure of operation, did not fall under the

jurisdiction of the IDNR. Falter responded that yes, the IDNR primarily is responsible for regulating the reclamation process. However, he noted that certain portions of the mining process do fall within the purview of the IDNR, specifically including the stripping of burden and the blasting operations.

Lt. Governor Simon invited discussion on the fourth question addressed by the IDNR, which asked if copies of the studies regarding environmental concerns could be made available to the public.

Discussion on Question 4

Falter informed the Council that once the permit relating to the potential sand mine has been deemed complete by the IDNR and a final decision is rendered, the approved permit and the final reclamation plan would be made available to the public.

Lt. Governor Simon asked Falter if the documents relating to the consultation process are in their final form, even though they are not yet fully approved. Falter responded that the documents related to the consultation process are in their final form. He also noted that a review of the application has been completed and that the bond and fee letter has been dispensed to Mississippi Sand. However, Falter informed the Council that until the bond and fee are returned by Mississippi Sand, the final permit cannot be approved.

Lt. Governor Simon asked if there were other questions related to the answers provided by the IDNR to the questions raised during the August 7 phone conference. Ayers responded that he believed the discussion had covered all of the answers provided by the IDNR.

Yang commented that she had a question directed to the IEPA. She asked if the air and construction permits that were approved by the IEPA within the week before this meeting were just general permits, or if they were individual permits. Neiberhall responded that on August 27, a general stormwater permit and a site-specific air construction permit were issued by the IEPA. He noted that the IEPA had created and distributed a notification letter to this effect. Neiberhall informed the Council that all three documents – the two approved permits and the notification letter – were available on the IEPA website for review.

Yang asked if the IEPA was still considering a discharge permit for the potential mining location. Neiberhall responded that the discharge permit application is still under review. He noted that prior to the call he checked with one of the reviewers, who believed that the agency is close to issuing a draft decision on the discharge permit. Neiberhall believes that a decision regarding the discharge permit can be expected within the next few weeks.

Yang asked if the discharge permit would be a general or a site-specific permit. Neiberhall was unsure.

Yang asked if there would be a comment period for the discharge permit. Neiberhall responded that there would be some type of comment period. He informed the Council that a notice regarding the draft permit would be posted on the IEPA's website and that the public would have the ability to comment on the draft permit at that time.

Mitchell asked Neiberhall if the Office of the Lt. Governor could be given information on when that notification would be provided, as well as updates on the permitting process. Neiberhall affirmed that the IEPA could provide such information to the Office of the Lt. Governor.

Yang noted that the Sierra Club has requested that the discharge permit be an individual, or site-specific, permit, due to the potential mine's location to Starved Rock State Park. Neiberhall responded that he would take that point to Marcia Willhite, who typically works with the IRCC.

Yang noted that she had additional questions directed to the Illinois Historic Preservation Agency (IHPA). She noted that a letter released by the IEPA which discussed the recently approved permits mentioned that a memorandum of agreement was signed by the IHPA, Mississippi Sand, and the IEPA. Yang asked for information as to what that memorandum means, what it says, and how the agencies came about their decisions which related to the memorandum. Phillippe informed the Council of the process followed by the IHPA up to the point of the memorandum of agreement. He noted that an archaeological survey was originally done by an archaeologist hired by Mississippi Sand, and that the initial survey found no archeological remains on the site. The IHPA determined that this initial survey was unacceptable and rejected the findings. A second archaeologist was retained by Mississippi Sand, and his study found a number of archeological sites on the mining location. The IHPA reviewed the report made by the second archaeologist and also tested portions of the potential mining site for confirmation before approving the survey. Phillippe informed the Council that the IHPA's review of the site was able to reduce the size of the site based on the importance of specific artifacts and that the mitigation plan would protect those artifacts.

Mitchell asked if the findings of the IHPA and the memorandum of agreement signed by the IHPA, the IEPA, and Mississippi Sand would be public documents. Phillippe responded that they would. Yang noted that the Sierra Club has sent FOIA requests for those documents. Phillippe noted that those requests had been received, but that the IHPA was still waiting on some signature pages from Mississippi Sand. Further, Phillippe noted that some information on the archaeological findings would have to be redacted, as required by the law.

Mitchell asked if maps of the archaeological findings are included within the study. Phillippe noted that there are maps, but reiterated that some of the information on them would need to be redacted in accordance with the law. Phillippe noted that the final documents, once complete, would be on file at the LaSalle County Clerk's Office.

Neiberhall informed the Council that the IEPA would be willing to send copies of the final documents from the IEPA and the IHPA to the Office of the Lt. Governor for dissemination to members of the Council.

Lt. Governor Simon informed the Council that she would need to leave to attend another meeting. She introduced her surrogate as Maria Cappocia, Office of the Lt. Governor. Lt. Governor Simon thanked the members of the Council for participating in the call.

Cappocia invited additional questions from members of the Council and the public.

Mitchell asked if the company would be able to mine on the site once the IDNR permit is granted, regardless of whether the IEPA permit is still outstanding. Neiberhall responded that the only outstanding permit from the IEPA is the discharge permit and noted that until that permit is issued, the company cannot begin mining because it would generate runoff which could not be discharged. However, Neiberhall noted that the stormwater permit which was approved by the IEPA does allow the company to begin general construction on the site drainage plan, including construction of the site's roadways and the sedimentation basin which will collect site runoff.

Blumenshine asked if the company could proceed with stormwater construction before the bond and fee is paid. Falter clarified that the bond and fee related to the IDNR permit, and that the company could not do any work which falls under the IDNR's jurisdiction until that fee was paid.

Yang asked the IHPA how much land would be preserved by the archaeological survey. Worthen responded that the IHPA may not be able to provide that information, due to the laws requiring redaction of information from the published archaeological findings. Worthen mentioned that these redactions are meant to protect the artifacts from disturbance from individuals who would wish to remove them. Phillippe confirmed that all site-specific information relating to the artifacts would be protected by the redactions.

Mitchell asked if any information on the size of the archaeological area that would be protected could be given, such as the square footage of the site. Phillippe noted that there were multiple sites and that portions of each were protected. He did not have the exact figure in terms of square footage, but believed that he could find that information from the maps of the area. Phillippe informed the Council that the artifacts would be covered and marked, so that they would be protected for as long as the mines are there. He noted that a covenant would be on those locations until the IHPA releases them from its control.

Mitchell noted that other mines around the same area as the proposed mining site appeared to be large pits and questioned how the company would be able to mine around the artifacts on the site. Phillippe responded that there were numerous sites within those other mining areas, but that none qualified to be listed on the national registry. Mitchell clarified that her question related to how this particular mining operation would be able to avoid disturbing the artifacts protected by the IHPA. Phillippe responded that the survey completed by the hired archaeologist and confirmed by the IHPA identified the resources in the area. The artifacts within the portions of the site that the company wanted to mine were tested, and it was determined that they did not make an archaeological contribution. The portions of the area that the mining company stated it would not mine were not tested. Phillippe noted that the untested areas of the mining location would be preserved with covenants on them. If the mining company later wishes to mine in those areas, the IHPA would return to study those artifacts to determine their archaeological importance.

Mitchell asked if the canyons and bluffs within Starved Rock State Park fall under the purview of the IHPA as artifacts. Phillippe noted that the IDNR is responsible for surveying state parks, including Starved Rock State Park, and that the resources within the park have been identified. Mitchell responded that the IDNR previously noted that it did not walk the site during its permitting process. Phillippe noted that the purview of the IDNR during its permitting process does not include Starved Rock State Park or archaeological artifacts.

Cappocia asked for any further questions from members of the Council or the public. There were no further questions.

Adjournment

Cappocia noted that the Office of the Lt. Governor would follow up on the commitments that were made by the state agencies during this phone call, so that the Office could provide further information to the IRCC. She also informed the Council that the minutes from this phone conference would be prepared and distributed to all members of the IRCC.

The meeting was adjourned at 12:08 p.m.